

**ASSET PURCHASE AGREEMENT**

by and between

**OKLAHOMA FIXTURE COMPANY,**  
an Oklahoma corporation,

**OKLAHOMA INSTALLATION COMPANY,**  
an Oklahoma corporation

and

**PENLOYD, LLC**  
an Oklahoma limited liability company

**May 15, 2003**



## **ASSET PURCHASE AGREEMENT**

**THIS ASSET PURCHASE AGREEMENT** is entered into as of the 15<sup>th</sup> day of May, 2003, by and between **PENLOYD, LLC**, an Oklahoma limited liability company, on the one hand ("**Buyer**"), and **OKLAHOMA FIXTURE COMPANY**, debtor and debtor in possession, a/k/a Oklahoma Fixture Company, Inc. ("**OFC**") and **OKLAHOMA INSTALLATION COMPANY**, debtor and debtor in possession, a/k/a Oklahoma Installation Company, Inc. ("**OIC**"), on the other hand (each of **OFC** and **OIC** is hereafter referred to as a "**Seller**" and collectively "**Sellers**").

### **RECITALS**

**WHEREAS**, **Sellers** are engaged in the business of designing, manufacturing, selling, fabricating and/or installing fixtures, millwork, surfaces, architectural interiors, glass showcase frames and hardware for commercial customers (the "**Business**");

**WHEREAS**, **Sellers** are debtors in possession under jointly administered Chapter 11 bankruptcy cases pending in the United States Bankruptcy Court for the Northern District of Oklahoma (the "**Bankruptcy Court**"), In re Oklahoma Fixture Company and Oklahoma Installation Company, Bankruptcy Case Nos. 03-00476-M and 03-00493-M (the "**Bankruptcy Case**" or "**Bankruptcy Cases**") under Chapter 11 of the United States Code ("**Bankruptcy Code**"); and

**WHEREAS**, **Sellers** desire to sell the Purchased Assets (defined below) to **Buyer**, and **Buyer** desires to purchase the Purchased Assets from **Sellers**, subject to the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the recitals and of the mutual covenants, conditions and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

### **ARTICLE I** **DEFINITIONS; BANKRUPTCY PROCESS**

**1.1 Definitions.** The following terms shall have the following meaning for purposes of this Agreement:

**"Accounts Receivable"** Accounts Receivable shall mean (i) all pre and post-petition trade accounts receivable and other rights to payment from customers of **Sellers** and the full benefit of all security for such accounts or rights to payment, (ii) all pre and post-petition other accounts or notes receivable of **Sellers** and the full benefit of all security for such accounts or notes, and (iii) any pre and post-petition claim, remedy or

other right related to the enforcement of the payment of the foregoing accounts receivable.

**“Agreement”** Agreement shall mean this Asset Purchase Agreement, together with the Schedules and Exhibits attached hereto, as the same may be amended from time to time in accordance with the terms hereof. All references herein to a Section, Article or Schedule are to a Section, Article or Schedule of or to this Agreement, unless otherwise indicated.

**“Affiliate”** Affiliate of a Person shall mean a Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the first Person.

**“Applicable Law”** Applicable Law shall mean all applicable provisions of all (i) constitutions, treaties, statutes, laws, rules, regulations, ordinances, codes or orders of any Governmental Authority, (ii) Governmental Approvals, and (iii) orders, decisions, injunctions, judgments, awards and decrees of, or agreements with, any Governmental Authority.

**“Assumed Liabilities”** Assumed Liabilities shall have the meaning set forth in Section 2.3.

**“Bank”** Bank shall mean The F&M Bank and Trust Company of Tulsa, Oklahoma.

**“Bank Debt”** Bank Debt shall have the meaning set forth in Section 2.4.

**“Bankruptcy Cases”** Bankruptcy Cases has the meaning given such term in the recitals of this Agreement.

**“Bankruptcy Code”** Bankruptcy Code has the meaning set forth in the recitals of this Agreement.

**“Bankruptcy Court”** Bankruptcy Court has the meaning set forth in the recitals of this Agreement.

**“Bankruptcy Rules”** Bankruptcy Rules has the meaning given such term in Section 1.2.1.

**“Bid Procedures Motion”** Bid Procedures Motion has the meaning given such term in Section 1.2.2.

**“Business”** Business shall have the meaning assigned in the first recital.

**"Closing"** Closing shall mean the conveyance by the Sellers to Buyer of the Purchased Assets, and the transfer by Buyer to the Sellers of the consideration set forth in Section 3.1.

**"Closing Date"** Closing Date shall mean the time and date of the Closing as specified in Section 3.1.

**"Code"** Code shall mean the Internal Revenue Code of 1986, as amended from time to time, or similar provisions of legislation replacing such law from time to time.

**"Consent"** Consent shall mean any consent, approval, authorization, waiver, permit, grant, franchise, concession, agreement, license, exemption or order of, registration, certificate, declaration or filing with, or report or notice to, any Person.

**"DIP Loan"** DIP Loan shall mean the loans by the Bank to OFC and OIC as Debtors after the Petition Dates pursuant to various Orders of the Bankruptcy Court approving the loans.

**"Dollars or \$"** Dollars or \$ shall mean U.S. dollars.

**"Effective Time of Closing"** Effective Time of Closing shall have the meaning set forth in Section 3.1.

**"Environmental Law"** Environmental Law shall mean any federal, state or local environmental, health and/or safety law, regulation, rule or ordinance applicable to Sellers' property and operations, as each such law, regulation, rule or ordinance may be amended from time to time, and includes, without limitation, the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, the Clean Air Act, the Toxic Substances Control Act (TSCA), the Hazardous Material Transportation Act (HMTA), the Occupational Safety and Health Act (OSHA), the Oil Pollution Act of 1990, the Emergency Planning and Community Right to Know Act of 1986, the National Environmental Policy Act, Safe Drinking Water Act and any similar, state and/or local law, rule, regulation, ordinance, advance or directive.

**"Environmental Condition"** Environmental Condition shall mean any condition with respect to the environment, whether or not yet discovered, which could or does result in any damage, loss, cost, expense, claim, demand, order, liability, clean-up, remediation or response action of any type by any party affecting soil, surface water, groundwater, land, stream sediments, surface or subsurface conditions, ambient air and/or other environmental medium.

**"Environmental Record"** Environmental Record shall mean any document, correspondence, pleading, report, environmental site assessment, environmental audit, investigation report, analytical data or result, monitoring report, notice, permit,

certificate, authorization, or other approval concerning any Environmental Condition, Environmental Law, or other environmental subject and related in any way to the Seller Real Property or operations of Sellers.

**“Excluded Assets”** Excluded Assets shall have the meaning given such term in Section 2.2.

**“Excluded Liabilities”** Excluded Liabilities shall have the meaning set forth in Section 2.5.

**“Financial Statements”** Financial Statements shall mean (i) the unaudited, consolidated statement of operations, statement of retained earnings and comprehensive income, statement of cash flow, supplemental information, and the balance sheet of Sellers for the period ending March 31, 2003; and (ii) the audited (or unaudited, to the extent that audited statements are not available) statements of operations, statements of retained earnings and comprehensive income, statements of cash flow, supplemental information, and the balance sheets for each of the Sellers for the calendar years 2000, 2001, and 2002.

**“Governmental Approval”** Governmental Approval shall mean any Consent of, with or to any Governmental Authority.

**“Governmental Authority”** Governmental Authority shall mean any nation or government, any state or other political subdivision thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including without limitation, any federal, state or local court, agency, department, board, commission, bureau, governmental body or instrumentality of the United States, any state of the United States or any political subdivision thereof, and any tribunal or arbitrator(s) of competent jurisdiction, and any self-regulatory organization.

**“Hazardous Substances”** Hazardous Substances shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, petroleum or petroleum by product as defined in or pursuant to any Environmental Law.

**“Intellectual Property”** Intellectual Property means any or all of the following and all rights in, arising out of, or associated therewith: (i) all United States, international and foreign patents and applications therefor and all reissues, divisions, revisions, renewals, reexaminations, extensions, provisionals, continuations and continuations-in-part thereof; (ii) all inventions (whether or not patentable or patented and whether or not reduced to practice), invention disclosures, improvements, trade secrets, proprietary information, know-how, technology, technical data, pricing and cost information, marketing plans and proposals and customer and supplier lists; (iii) all copyrights, copyright registrations and applications therefor and all renewals thereof and all other rights corresponding thereto throughout the world; (iv) all industrial designs and any registrations and applications therefor throughout the world and renewals thereof; (v) all trade names, corporate names, trade dress, logos, common law trademarks and service

marks, together with all translations, adaptations, derivations and combinations thereof and all goodwill associated therewith; (vi) all trademark and service mark registrations and applications therefor and renewals thereof and all goodwill associated therewith throughout the world; (vii) all domain names, uniform resource locators and other Internet or similar addresses or identifiers (collectively, "Domain Names"); (viii) all databases and data collections and all rights therein throughout the world; (ix) all computer software including all source code, object code, firmware, development tools, files, records and data and all media on which any of the foregoing is recorded; (x) all similar, corresponding or equivalent rights to any of the foregoing; and (xi) all documentation related to any of the foregoing.

**"Inventory"** Inventory shall have the meaning set forth in Section 2.1(c).

**"Liabilities"** Liabilities shall mean any liability, commitment, mortgage, pledge, hypothecation, right of others, claim, defense, interest, debt, payable, judgment, decree, order, security interest of any kind, lien, encumbrance, lease, sublease, license, occupancy agreement, adverse claim or interest, easement, covenant, encroachment, burden, title defect, title retention agreement, voting trust agreement, equity, option, right of first refusal, charge or other restrictions, limitations or obligations, either accrued, absolute, contingent, or otherwise, matured or unmatured, known or unknown, of every kind and nature whatsoever.

**"Order"** Order shall mean any award, decision, injunction, judgment, order, ruling, subpoena, or verdict entered, issued, made, or rendered by any court, administrative agency, or other governmental entity or by any arbitrator.

**"Ordinary Course of Business Expenses"** Ordinary Course of Business expenses shall mean the following post Petition Date expenses which would normally be entitled to an administrative priority under the Bankruptcy Code in the Bankruptcy Cases and which arise in the ordinary course of Sellers' businesses and are unpaid as of the Closing Date: unpaid wages for no more than fourteen (14) work days, unpaid utility costs which are not yet billed, unpaid invoices for ordinary course goods and services provided to Sellers within the thirty (30) day period preceding the Closing Date.

**"Person"** Person shall mean any individual, firm, partnership, association, joint venture, limited liability company, corporation, company, trust, business trust, Governmental Authority or other entity.

**"Petition Date or Petition Dates"** Petition Date or Petition Dates shall mean January 31, 2003, as to OFC and February 3, 2003, as to OIC, for the filing by each of the Sellers of their respective Bankruptcy Cases with the Bankruptcy Court.

**"Purchased Assets"** Purchased Assets shall have the meaning set forth in Section 2.1.

**“Purchased Contracts”** Purchased Contracts shall have the meaning set forth in Section 2.1(e).

**“Purchase Price”** Purchase Price shall be an amount equal to the Assumed Liabilities.

**“Sale Order”** Sale Order shall have the meaning given such term in Section 1.2.4.

**“Sale Procedures Order”** Sale Procedure Order means the order of the Bankruptcy Court dated May \_\_, 2003, that approved the Bid Procedures Motion.

**“Seller Real Property”** Seller Real Property means the real property and all improvements thereon (including all land, buildings and fixtures) located in Tulsa, Oklahoma and Bowling Green, Kentucky, as more specifically described on Schedule 1.1.

**“Third Party Bidder”** Third Party Bidder shall have the meaning given such term in Section 1.2.5.

**“Termination Fee”** Termination Fee shall have the meaning assigned in Section 1.2.5.

## **1.2 Bankruptcy Court Process.**

**1.2.1 Bankruptcy Approvals.** This Agreement is entered into by all parties with the express understanding that this Agreement and the effectiveness of this Agreement is subject to: (i) approval of the Bankruptcy Court, and (ii) the applicable provisions of the Bankruptcy Code and the Federal Rules of the Bankruptcy Procedure (the “Bankruptcy Rules”).

**1.2.2 The Bid Procedures Motion.** On or about March 31, 2003, Sellers filed with the Bankruptcy Court a motion seeking approval of certain bidding procedures including, without limitation, payment of the Termination Fee and other procedures for the Sale Motion (the “Bid Procedures Motion”).

**1.2.3 The Sale Motion.** Not later than five (5) days after executing this Agreement, Sellers shall file with the Bankruptcy Court a motion pursuant to Sections 363 and 365 of the Bankruptcy Code (the “Sale Motion”), with supporting papers (including a copy of this Agreement), seeking approval of: (i) the sale of the Purchased Assets to Buyer pursuant to the terms of this Agreement, free and clear of any and all Liabilities, except Assumed Liabilities, pursuant to Section 363 of the Bankruptcy Code, and (ii) the assumption by the Sellers of the Purchased Contracts and the assignment to and assumption by Buyer of all the Purchased Contracts pursuant to Section 365(f) of the Bankruptcy Code. The Sale Motion shall be in a form reasonably satisfactory to Buyer.

**1.2.4 The Sale Order.** The "Sale Order" means an Order of the Bankruptcy Court that (i) grants the Sale Motion, (ii) is in form and substance reasonably satisfactory to Buyer and Buyer's counsel, (iii) approves the sale of the Purchased Assets to Buyer pursuant to the terms of this Agreement and the provisions of the Bankruptcy Code, (iv) approves and directs payment of sales or use tax by the Buyer and (v) approves assignment of the Purchased Contracts to Buyer and Buyer's assumption from Sellers of the Assumed Liabilities related thereto pursuant to Section 365(f) of the Bankruptcy Code. The Sale Order shall provide, *inter alia*, that the transfer of the Purchased Assets by Sellers to Buyer shall (i) be free and clear of all Liabilities (except for the Assumed Liabilities); (ii) constitute a legal, valid and effective transfer of the Purchased Assets which shall be binding upon any subsequent Chapter 7 or Chapter 11 trustee that may be appointed in Sellers' bankruptcy cases or the reorganized Sellers or the appropriate representative of the reorganized Sellers; (iii) constitute a transaction undertaken in good faith pursuant to Section 363(m) of the Bankruptcy Code on behalf of Buyer and Sellers; (iv) not subject Buyer to any Liability by reason of the purchase under any state, territorial or federal law, including Liability for any matter relating to the Purchased Assets as a successor or transferee, except for the Assumed Liabilities. The Sale Order shall also contain provisions directing any clerk in any location where the Purchased Assets are located to cancel and remove from the public record any liens, claims, interest, encumbrance, demand, suit, action and other judicial or administrative proceeding or investigation, or any other Liability.

**1.2.5 Termination Fee.** Pursuant to the Sale Procedures Order, Sellers shall pay to Buyer a fee in cash equal to \$225,000.00 (the "Termination Fee") if, and only if (i) Buyer has not withdrawn, attempted to withdraw from or defaulted under the transaction contemplated in this Agreement other than because of the Sellers' failure to comply with the provisions of this Agreement; (ii) this Agreement is not approved by the Bankruptcy Court; and (iii) an offer is received by Sellers at any time during the pendency of the Bankruptcy Case from some other Person or entity to purchase all or a substantial portion of the Purchased Assets, which third-party offer is approved by the Bankruptcy Court and such offer results in an actual sale of the Purchased Assets to a Person other than Buyer ("Third Party Bidder").

**1.2.6 Termination Fee Payment/Vesting.** The Termination Fee shall be an allowed administrative expense pursuant to Section 503(b)(1) of the Bankruptcy Code payable other than those paid in the ordinary course of business. The Termination Fee shall vest in favor of Buyer as provided above, but shall be paid on the closing date of a sale of all or a substantial portion of the Purchased Assets to a Third Party Bidder who is a Person other than Buyer and not an Affiliate of the Buyer. Notwithstanding anything to the contrary contained in this Agreement, Buyer shall not be entitled to a Termination Fee if Buyer or any Affiliate of Buyer acquires the Purchased Assets.

**1.2.7 Cooperation.** Sellers and Buyer shall use all reasonable efforts consistent with their obligations under the Bankruptcy Code and Bankruptcy Rules to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable under the Bankruptcy Code, Bankruptcy Rules and other applicable laws and



regulations to consummate and make effective the transactions contemplated by this Agreement, including making reasonable efforts to obtain approval of this Agreement and the Sale Motion by the Bankruptcy Court.

**1.2.8 Consent to Jurisdiction.** The Bankruptcy Court shall have exclusive jurisdiction to resolve any dispute with respect to this Agreement. The parties to this Agreement hereby consent to the jurisdiction of the Bankruptcy Court and to the entry of final orders or judgment by the judge presiding over the Bankruptcy Cases in any dispute with respect to this Agreement.

## **ARTICLE II** **PURCHASE AND SALE OF ASSETS**

**2.1 Purchase.** Subject to the terms and conditions set forth in this Agreement, at the Closing, Buyer shall purchase from Sellers, and Sellers shall sell, transfer, convey, assign and deliver to Buyer, free and clear of any and all Liabilities (except for the Assumed Liabilities), all right, title and interest of Sellers in and to all of the assets owned or leased by Sellers as of the Closing Date, which are used in or otherwise necessary for the operation of the Business, whether tangible, intangible, personal or real (collectively, the "Purchased Assets"), including, without limitation, all of the following assets:

(a) all machinery, equipment, furniture, furnishings and similar property used in the Business, including without limitation two (2) R4CU CNC Routers, and the equipment, furniture, furnishings and similar property identified on Schedule 2.1(a);

(b) the Intellectual Property of Sellers used in the Business;

(c) all inventories, including all unused or reusable materials, stores, parts, supplies and work in process used in the Business (the "Inventory");

(d) any and all real property of Sellers ever used in, currently used in, or contemplated to be used in the Business, including without limitation, the Seller Real Property;

(e) all rights (including without limitation, all rights to receive goods and services and to assert claims and take other rightful actions in respect of breaches, defaults and other violations) existing under the contracts, agreements, licenses and other commitments used in the Business (i) set forth on Schedule 2.1(e), (ii) which Buyer (in its sole and absolute discretion) adds to Schedule 2.1(e) by providing written notice to Sellers on or before the date that is one day prior to the date on which Sellers are required to send notice of the hearing regarding the Sale Motion to interested parties, and (iii) entered into by either Seller between the date hereof and the Closing Date which Buyer (in its sole and absolute discretion) agrees to assume as of the Closing Date (collectively, the "Purchased Contracts");

(f) Accounts Receivable;

(g) all credits, prepaid expenses, deferred charges, advance payments and security deposits;

(h) all books, records, manuals and other materials (in any form or medium), including without limitation, all technical and descriptive materials relating to the acquisition, design, development, use, or maintenance of any Seller Intellectual Property, and all advertising matter, catalogues, price lists, correspondence, mailing lists, lists of customers, distribution lists, production data, sales and promotional materials and records, purchasing materials and records, personnel records, manufacturing and quality control records and procedures, blueprints, research and development files, records, data and laboratory books, Intellectual Property disclosures, media materials and plates, accounting records, and sales order files;

(i) all Governmental Approvals, to the extent transferable under Applicable Law;

(j) all guarantees, warranties, indemnities and similar rights in favor of Sellers with respect to the Purchased Assets; and

(k) avoidance actions of the Bankruptcy Cases for the vendors listed on Schedule 4.1.12.

Notwithstanding anything to the contrary herein, Buyer agrees that its rights in and to that certain real property of OFC located in Warren County, Kentucky (consisting of approximately 15 acres) will be subject to any existing, secured claims on such property which are senior to the secured claim of the Bank, provided that Buyer shall not assume or otherwise be liable for any Liabilities associated with such claims. The parties recognize that the two (2) R4CU CNC Routers referenced in Section 2.1(a) above may be subject to existing, secured claims that are senior to the secured claim of the Bank. Sellers shall take all actions necessary to allow for the transfer of such Routers to Buyer free and clear of all Liabilities.

**2.2 Excluded Assets.** Notwithstanding the foregoing, the following assets are expressly excluded from the purchase and sale contemplated hereby and, as such, are not included in the Purchased Assets:

(a) a 1986 Sea Ray boat, 410 aftcabin serial number SERF6984B686M1410AC519-41;

(b) avoidance actions of the Bankruptcy Cases other than those identified in Section 2.1(k) above;

(c) claims against Mark Cavins and any and all cash or deposits held in escrow or otherwise associated therewith;

(d) a Cessna Airplane 421B N210FC serial number 421B0908; and

(e) all contracts, agreements, licenses and other commitments other than the Purchased Contracts.

**2.3 Assumption of Liabilities/Purchase Price.** Subject to the terms and conditions set forth in this Agreement, at the Closing, Buyer shall assume and agree to pay, honor and discharge when due in the ordinary course of business, the following specific Liabilities of Sellers that relate exclusively to the Business (collectively, the "Assumed Liabilities"):

(a) the sum of:

(i) Twelve Million Seven Hundred Thousand Dollars (\$12,700,000.00) of the Bank Debt which arose before the Petition Date, less the amount of any pre Petition Date Accounts Receivable collected by Sellers during the period beginning on the date hereof and ending on the Effective Time of Closing, which amount shall be agreed upon by Sellers, Buyer and Bank; and

(ii) the amount advanced and outstanding under the DIP Loan as of the Closing Date less the sum of \$1,000,000.00 (as a discount for the uncertainty of the amounts advanced under the DIP Loan); provided, however, that in no event shall the amount to be assumed under this clause exceed \$4,500,000;

(b) Sellers' obligations under the Purchased Contracts solely to the extent such obligations arise after the Effective Time of Closing; and

(c) the Ordinary Course of Business Expenses; provided, however, that in no event shall the amount to be assumed under this clause exceed \$500,000.

**2.4 Bank Debt.** The liabilities identified in Section 2.3(a) are part of the existing pre petition indebtedness of Sellers to Bank in the aggregate principal amount of approximately \$17,000,000.00, and part of the DIP Loan indebtedness of Sellers to Bank (collectively the "Bank Debt").

**2.5 Excluded Liabilities.** Notwithstanding any other provision hereof, except for the Assumed Liabilities, Buyer shall not assume or otherwise be liable for in any respect any Liabilities of Sellers whether relating to or arising out of the operation of the Business or the ownership of the Purchased Assets, the Excluded Assets or otherwise (collectively, the "Excluded Liabilities"). Without limiting the foregoing, Buyer shall not assume or otherwise be liable for in any respect any letter of credit Liabilities of Sellers or any Liabilities of Sellers with respect to that certain real property of OFC located in Warren County, Kentucky (consisting of approximately 15 acres), all of which shall be Excluded Liabilities. Sellers shall at all times remain solely liable and responsible for the Excluded Liabilities.

**2.6     Allocation of Purchase Price.** For tax purposes, the Purchase Price shall be allocated among the Purchased Assets on the basis mutually agreed between Buyer and Sellers prior to Closing. The parties agree (i) to report the transactions contemplated hereby in accordance with such allocation in a form 8594 to be filed in connection herewith and in computing their taxable income and otherwise in preparing and filing their tax returns for federal, state and local income tax purposes; and (ii) that, in the event any audit, proceeding, suit, action or investigation is brought against the other party by or before any Governmental Authority, each party will at all times maintain and defend the reporting positions agreed on in this Agreement, and use its respective best efforts to obtain a settlement or resolution consistent with such position in any such proceeding.

### **ARTICLE III** **THE CLOSING**

**3.1     Place and Date.** Subject to Article IX hereof, the closing of the transactions contemplated hereby (the "Closing") shall take place at such location as may be mutually agreed by the parties in writing on such date that is two (2) business days after all conditions to Closing hereunder are satisfied or waived or such later date as Sellers, Buyer and Bank may agree (the "Closing Date"). Closing shall be effective as of 12:01 a.m., Tulsa, Oklahoma time on the Closing Date (the "Effective Time of Closing").

**3.2     Closing Deliveries by Sellers.** At the Closing, subject to the terms and conditions set forth in this Agreement, Sellers shall deliver, or cause to be delivered, to Buyer, all documents reasonably required to effectuate the transactions contemplated herein, including but not limited to, all originals of the Purchased Contracts, bills of sale, assignments, deeds, consents, attornments, estoppels, termination statements, books and records and such other documents as Buyer may reasonably require, including updated title reports, environmental reports and title insurance for the benefit of Buyer with respect to the Seller Real Property.

**3.3     Closing Deliveries by Buyer.** At the Closing, subject to the terms and conditions set forth in this Agreement, Buyer shall deliver, or cause to be delivered, to Sellers and/or Bank, all documents reasonably required to effectuate the assumption by Buyer of the Assumed Liabilities.

**3.4     Pro-Ration of Taxes.** Other than sales tax, all taxes assessed against or prepaid with respect to the Purchased Assets for the tax year in which the Closing Date occurs shall be pro-rated as of the Closing, based upon the applicable tax rate for such period. Sellers shall be responsible for that portion of the pro-rated taxes accrued for the period ending as of the Closing Date if, and to the extent, any such tax claim is allowed in Sellers' Bankruptcy Case, and Buyer shall be responsible only for that portion of the pro-rated taxes attributable to the period beginning after the Closing Date.

**ARTICLE IV**  
**REPRESENTATIONS AND WARRANTIES**

**4.1 Representations and Warranties of Sellers.** Sellers jointly and severally hereby make the following representations and warranties to Buyer, each of which (a) is relied upon by Buyer in executing this Agreement, and (b) shall be true and correct as of the date hereof and as of the Closing Date as though such representation and warranty is made as of the Closing Date:

**4.1.1 Organization.** Each Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Oklahoma and is now a debtor and debtor in possession under the Bankruptcy Cases. In the Bankruptcy Cases, each Seller has all requisite power and authority to carry on its business as now being conducted and to own, lease and operate its properties and assets as now owned, leased or operated, and to perform all its obligations under the agreements and instruments to which it is a party or by which it is bound.

**4.1.2 Authorization; No Violation.** Subject to entry of the Sale Order, each Seller has full corporate power and authority to execute and deliver this Agreement, to perform fully its obligations hereunder, and to consummate the transactions contemplated hereby. The execution and delivery by Sellers of this Agreement, and the consummation of the transactions contemplated hereby, have been duly authorized by all requisite corporate action of Sellers, and Sellers have duly executed and delivered this Agreement subject to entry of the Sale Order. This Agreement is, and the other documents and instruments required hereby will be, when executed and delivered by Sellers, legal, valid and binding obligations of Sellers, enforceable against Sellers in accordance with their respective terms subject to entry of the Sale Order. The execution, delivery and performance of this Agreement by Sellers, and the consummation of the transactions contemplated hereby, do not and will not conflict with or result in a violation of or a default under (with or without the giving of notice or the lapse of time or both) any provisions of the Articles of Incorporation or Bylaws of Sellers.

**4.1.3 Compliance with Laws.** Sellers have complied in all material respects with all Applicable Laws, and Sellers have not received any notice alleging any noncompliance with such Applicable Laws.

**4.1.4 Purchased Assets.** Subject to entry of the Sale Order, each Seller has good and marketable title to all the Purchased Assets it purports to own, and will convey the Purchased Assets to Buyer at the Closing free and clear of any and all Liabilities (except for the Assumed Liabilities). The Purchased Assets, taken as a whole, constitute all the material properties and assets relating to or used or held for use in connection with the Business during the past twelve (12) months, except for assets located in the state of Kentucky. The Purchased Assets are adequate for the purposes for which such assets are currently used or are held for use, and are in good repair and operating condition (subject to normal wear and tear) and, to the knowledge of Sellers, there are no facts or conditions affecting the Purchased Assets which could, individually or in the aggregate, interfere in

any material respect with the use or operation thereof as currently used or operated, or their adequacy for such use.

**4.1.5 Litigation and Claims.** Except as set forth in Schedule 4.1.5 and after the Sale Order, there is no action, claim, demand, suit, judicial, administrative or governmental proceeding, arbitration, grievance, citation, summons, subpoena, inquiry or investigation of any nature, civil, criminal, regulatory or otherwise, in law or in equity, pending or, to the knowledge of Sellers, threatened against or relating to Sellers, the Purchased Assets or relating to the transactions contemplated by this Agreement, and Sellers do not know of any basis for the same.

**4.1.6 Purchased Contracts.**

(a) Sellers have delivered to Buyer complete and correct copies of all written Purchased Contracts, together with all amendments thereto, and true and correct written descriptions of all material terms of all oral Purchased Contracts.

(b) As of the Closing Date: All Purchased Contracts are in full force and effect, unmodified and enforceable against each party thereto in accordance with their terms. There does not exist under any Purchased Contract any enforceable event of default or event or condition that, after notice or lapse of time or both, would constitute a violation, breach or event of default thereunder on the part of either Seller or, to the knowledge of Sellers, any other party thereto. The enforceability of each Purchased Contract will not be affected in any manner by the execution, delivery and performance of this Agreement or the consummation of the transactions contemplated hereby. Except as set forth in Schedule 4.1.6, (i) all of the Purchased Contracts are assignable by Sellers to Buyer; (ii) the Purchased Contracts were each entered into at arm's length in the ordinary course of business consistent with prior practice; (iii) none of the Purchased Contracts provide for prepayments to Sellers other than in the ordinary course of business; (iv) neither Seller has received any prepayment with regard to any of the Purchased Contracts; and (v) Buyer is entitled to request full payment under each of the Purchased Contracts for Buyer's performance or delivery of products or services thereunder.

**4.1.7 Financial Information.** The Financial Statements, including in each case the notes thereto in all material respects, (i) are accurate and complete and contain no misstatements or omissions; (ii) were prepared in accordance with generally accepted accounting principles consistently applied throughout all periods except as otherwise noted therein (except that any unaudited Financial Statements do not contain notes and may be subject to normal year-end adjustments); and (iii) present fairly and accurately the financial condition and the results of operations of Sellers for the periods stated to be covered by such Financial Statements, and are consistent with the books and records of Sellers. The Statement of Financial Affairs and related schedules filed by Sellers in the Bankruptcy Case are accurate and complete in all material respects.

#### **4.1.8 Intellectual Property.**

(a) Each item of Intellectual Property of Sellers will be free and clear of any and all Liabilities or be part of the Assumed Liabilities. Each Seller (i) is the exclusive owner of, and has the right to use exclusively, all trademarks, trade names and Domain Names used in connection with the operation or conduct of the Business by such Seller, including the sale of any products or technology or the provision of any services by such Seller, and (ii) owns exclusively, and has good title to, all copyrighted works that are products of such Seller (including all copyrights related to any World Wide Web or other similar Internet sites operated by or on behalf of such Seller), and other works of authorship that such Seller otherwise purports to own. Sellers have delivered to Buyer correct and complete copies of all patents, registrations, applications and other written documentation evidencing ownership and prosecution of the Intellectual Property of Sellers.

(b) Neither Seller has transferred ownership of (or granted any license of or right to use or authorized the retention of any rights to use) any Intellectual Property to any Person.

(c) The Purchased Contracts include all contracts, licenses and agreements to which either Seller is a party with respect to any Intellectual Property of any Person other than Sellers.

(d) The operation of the Business as currently conducted does not infringe or misappropriate the Intellectual Property of any Person, and neither Seller has received notice that such operation of the Business so infringes or misappropriates any such Intellectual Property. To the knowledge of Sellers, no Person is infringing or misappropriating any Intellectual Property of Sellers.

(e) No Intellectual Property of Sellers or product, technology or service of Sellers is subject to any proceeding or outstanding decree, order, judgment, agreement or stipulation that restricts in any manner the use, transfer or licensing thereof by Sellers or may affect the validity, use or enforceability of such Intellectual Property.

**4.1.9 Real Property.** Except as set forth on Schedule 4.1.9, the Seller Real Property:

(a) is not subject to any leases, subleases, concessions or tenancies of any kind, whether oral or written, or any interests of any Person under an easement, contract, option, right of first refusal, mineral right, security agreement, Liability, covenant or other agreement;

(b) is not in the possession of any adverse possessors;

(c) is described fully and adequately in Schedule 1.1, and all of the buildings and improvements thereon are (i) located within the boundary lines of the described

parcel, are not in material violation of any applicable set back requirements, zoning laws or ordinances (and none of the buildings or improvements thereon are subject to "permitted non-conforming use" or "permitted non-conforming structure" classifications), (ii) do not encroach on any easement which may burden the Seller Real Property, (iii) do not serve any adjoining property for any purpose inconsistent with the use of the Seller Real Property, and (iv) are not located in any flood plain, except as otherwise disclosed in Schedule 4.1.9;

(d) and all buildings and improvements located thereon, have received all approvals of Governmental Authorities (including licenses and permits) required in connection with the ownership or use thereof, are in compliance with the Americans With Disabilities Act, and have been used and maintained in accordance with applicable building codes, zoning ordinances and other similar regulations and laws;

(e) is, and has been since the date of acquisition thereof, in the peaceful possession of one of the Sellers;

(f) has not been condemned, requisitioned or otherwise taken by any Governmental Authority, and to the knowledge of Sellers, no such condemnation, requisition or taking is threatened or contemplated;

(g) abuts on and has direct vehicular access to a public road, or has access to a public road via a permanent, irrevocable appurtenant easement benefiting the Seller Real Property;

(h) all facilities located on the Seller Real Property are supplied with utilities and related services necessary and adequate for the use and operation of such facilities in the Business, including gas, electricity, water, telephone, sanitary sewer and storm sewer, at normal and customary charges;

(i) to the knowledge of Sellers, there are no material structural defects or other problems with respect to the improvements or fixtures on the Seller Real Property, and there are no material defects or problems with the mechanical, heating, plumbing or other utility systems upon or serving the Seller Real Property; and

(j) to the knowledge of Sellers, there are no material changes in any zoning ordinances or other applicable laws or any zoning classification that would be caused by the transfer of the Seller Real Property or that are otherwise proposed or pending, which would restrict or prevent Buyer's use of the Real Property to conduct the Business. Sellers have separately provided to Buyer prior to the date hereof all title searches, title reports, surveys, studies, investigations and reports related to any of the Seller Real Property, in the possession of Sellers.



**4.1.10 Environmental Matters.** Except as disclosed on Schedule 4.1.10:

(a) Sellers are in compliance in all material respects with all Environmental Laws applicable to the Seller Real Property and the Business.

(b) Sellers have obtained all permits, licenses, certificates and other similar approvals required for its operations by any applicable Environmental Law and Sellers will provide reasonable assistance in transferring all such permits, licenses, certificates and similar approvals to Buyer to the extent required by Buyer to conduct its operations.

(c) Sellers have not generated, transported, disposed of, stored, treated or used any Hazardous Substances, except in compliance with all applicable Environmental Laws.

(d) There has been no Release or threatened Release of any Hazardous Substances at, onto, from or, to the knowledge of Sellers, in the vicinity of, any site owned, leased or otherwise used by Seller.

(e) Except as disclosed on Schedule 4.1.10, neither Seller:

(1) has entered into or is a party to or otherwise subject to any consent decree, consent order, or other court, civil or administrative order or similar directive with respect to the Seller Real Property and/or the Business relating in any way to any Environmental Condition or Environmental Law;

(2) has received any notice, demand, request for information, administrative or other inquiry, civil or administrative formal or informal complaint, notice, notice of violation, demand, citation, notice of responsibility or other similar type of notification with respect to any Environmental Condition or Environmental Law regarding the Seller Real Property and/or the Business ;

(3) has been subject to or threatened with, nor is Seller aware of any facts or conditions that would give rise to any action, claim, demand for payment, remediation, clean-up and/or response or remedial action of any type, resulting from or in any way relating to any Environmental Condition or Environmental Law; and

(4) has received any notice under the citizen suit provision of any Environmental Law.

(f) Neither Seller owns or operates, and any property or site owned, leased, operated, or otherwise used by either Seller does not contain, any underground storage tanks or containers, dumps, landfills, waste impoundments, waste treatment areas, asbestos, PCBs, lead paint, heavy metals, or arsonic.

(g) No lien has been imposed on the Seller Real Property in connection with any Environmental Condition or Environmental Law.

(h) Sellers have provided or have otherwise made available to Buyer all Environmental Records concerning the Business that Sellers possess.

(i) To the knowledge of Sellers, there are no Environmental Conditions or circumstances at the Seller Real Property or any location where Seller conducts its operations which pose a risk to the environmental or the health or safety of persons.

**4.1.11 Customers.** Schedule 4.1.11 hereof sets forth a complete and accurate list of the ten largest customers of the Business for calendar year 2002. Since December 31, 2002, neither Seller has received any notice, nor does either Seller have any reason to believe, that any such customer of either Seller (i) has ceased, or will cease, to use the products, goods or services of such Seller, (ii) has substantially reduced or will substantially reduce, the use of products, goods or services of such Seller, or (iii) has sought, or is seeking, to reduce the price it will pay for products, goods or services of such Seller. Schedule 4.1.11 includes a notation with respect to any such customers from whom payments (as a result of sales by Sellers) are delinquent, who have been placed on cash-on-delivery terms, or to which products and services are no longer provided due to poor credit history or other disputes.

**4.1.12 Suppliers.** Schedule 4.1.12 sets forth a complete and accurate list of all vendors and other suppliers of either Seller to whom such Seller has made payment for goods and services furnished of at least \$50,000 within the preceding twelve (12) months, relating to the types of services provided since December 31, 2002.

**4.1.13 Taxes.** Except as set forth on Schedule 4.1.13, Sellers have duly prepared and filed with all appropriate federal, state, local and foreign governmental agencies, all corporate and other tax returns and reports required by law, within the time or extended time required or permitted, and have timely paid all taxes, interest and penalties and related payments required to be made, when due and as shown on such returns. All such reports and returns were accurate and complete as filed and/or amended. Except as set forth on Schedule 4.1.13, all federal, state, local and foreign tax liabilities of Sellers relative to the operations of Sellers through the Closing Date have been or will be paid in full by Sellers by the Closing Date. Neither Seller is a party to any pending or threatened administrative or judicial action or proceeding by any Governmental Authority for the assessment or collection of taxes, and no amounts are owed or will be owed by Sellers with respect to any prior audits or reviews by any Governmental Authority. No events have occurred which could impose on Buyer any transferee liability for any taxes, penalties or interest due or to become due from Sellers.

**4.1.14 Absence of Certain Changes.** Except as set forth on Schedule 4.1.14, since December 31, 2002, neither Seller has:

- (a) sold, transferred, or otherwise disposed of any of the Purchased Assets;

(b) forgiven or canceled debts or waived any claims or rights of substantial value relating to the Purchased Assets;

(c) entered into any material transaction, commitment, agreement, contract, lease or license or series of related agreements, contracts, leases and licenses relating to the Business and Purchased Assets; or

(d) declared or paid any dividends or made any distributions to stockholders or purchased, redeemed, retired or otherwise acquired for value any of its capital stock.

**4.1.15 Employee and Labor Relations Matters.** With respect to all employees and any persons retained as independent contractors by Sellers, to the knowledge of Sellers and except as shown on Schedule 4.1.15, Sellers have complied with all federal, state, foreign and local laws and regulations respecting employment, employment discrimination, employment practices, terms and conditions of employment, payroll and withholding taxes, wages and hours, and occupational safety and health in the work place. Except as set forth on Schedule 4.1.15: (i) there is no unfair labor practice complaint against either Seller pending before the National Labor Relations Board or strike, lockout, dispute or work stoppage pending or, to the knowledge of Sellers, threatened against or involving either Seller, (ii) no charges, audits, investigations, or complaint proceedings are pending, or to the knowledge of Sellers, threatened, before the Equal Employment Opportunity Commission or any state, local or federal agency responsible for the prevention of unlawful employment practices with respect to either Seller, and there have been no actions taken or conditions caused by any employees or officers of either Seller that would give rise to any such complaint or charge, and (iii) neither Seller has received notice of the intent of any federal, state or local agency to conduct an audit or an investigation of or relating to or including such employees, independent contractors, or employment practices, and no such investigations are currently in progress.

**4.1.16 Brokers, Finders, etc.** All negotiations relating to this Agreement and the transactions contemplated hereby have been carried on without the participation of any Person acting on behalf of Sellers in such manner as to give rise to any claim against Buyer for any brokerage or finder's commission, fee or similar compensation, or for any bonus payable to any officer, director, employee, agent or sales representative of or consultant to Sellers upon consummation of the transactions contemplated hereby.

**4.1.17 Disclosure.** Neither this Agreement nor any schedule, certificate, exhibit, agreement, summary, instrument or document furnished or to be furnished by Seller pursuant hereto or in connection with the due diligence process performed by Buyer in connection herewith, contains any untrue statement of a material fact or omits or fails to state a material fact necessary in order to make the statements contained therein, in light of the circumstances in which made, not misleading. Sellers do not have any information or knowledge of any fact relating to the Business that may materially adversely affect the

Purchased Assets, the Business, or the prospects, financial condition or results of operations of Sellers that has not been set forth in this Agreement.

**4.1.18 No Setoff.** No breach of the Representations and Warranties of this Agreement shall allow Buyer a setoff against the Purchase Price/Assumed Liabilities. A material breach of the Representations and Warranties shall entitle Buyer the right to refuse to close and perform under this Agreement. The representations and warranties shall not survive the Closing and a breach thereof shall not entitle Buyer to a claim for damages or an administrative priority in the Bankruptcy Cases.

**4.2 Representations and Warranties of Buyer.** Buyer hereby makes the following representations and warranties to Sellers, each of which (a) is relied upon by Sellers in executing this Agreement, and (b) shall be true and correct as of the date hereof and as of the Closing Date as though such representation and warranty is made as of the Closing Date.

**4.2.1 Organization.** Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Oklahoma. Buyer has all requisite power and authority to carry on its business as now being conducted and to own, lease and operate its properties and assets as now owned, leased or operated, and to perform all its obligations under the agreements and instruments to which it is a party or by which it is bound.

**4.2.2 Authorization.** Buyer has full corporate power and authority to execute and deliver this Agreement, to perform fully its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery by Buyer of this Agreement, and the consummation of the transactions contemplated hereby, have been duly authorized by all requisite action of Buyer, and Buyer has duly executed and delivered this Agreement. This Agreement is, and the other documents and instruments required hereby will be, when executed and delivered by Buyer, legal, valid and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms.

**4.2.3 Brokers, Finders, etc.** All negotiations relating to this Agreement and the transactions contemplated hereby have been carried on without the participation of any Person acting on behalf of Buyer in such manner as to give rise to any claim against Sellers for any brokerage or finder's commission, fee or similar compensation.

**4.2.4 Disclosure.** Neither this Agreement nor any schedule, certificate, exhibit, agreement, summary, instrument or document furnished or to be furnished by Buyer pursuant hereto, contains any untrue statement of a material fact or omits or fails to state a material fact necessary in order to make the statements contained therein, in light of the circumstances in which made, not misleading.

**ARTICLE V**  
**CERTAIN MATTERS PENDING THE CLOSING**

**5.1 Sale Order.** Sellers shall use their best efforts to obtain as expeditiously as possible obtain the Sale Order. Sellers shall deliver to Buyer's counsel copies of all filings, motions and orders in the Bankruptcy Cases.

**5.2 Notice of Change.** Sellers shall promptly notify Buyer in writing in the event of (i) any material adverse change with respect to the Business, or (ii) any breach of or inaccuracy in any of the covenants, representations and warranties of Sellers set forth herein.

**5.3 Access to Information.** Prior to the Closing Date, Sellers shall permit reasonable access to properties and personnel of Sellers by Buyer and its accountants, counsel, consultants, employees and agents, and shall make available to Buyer and its representatives, all material, books, papers, agreements and other records relating to the Purchased Assets, the Business, and the obligations and liabilities of Sellers, so that Buyer may complete its review of the properties and records of Sellers prior to the Closing Date. In addition, Buyer shall have the right to speak and/or meet with customers and suppliers of Sellers (with agents of the Sellers present) prior to the Closing Date, and Sellers shall cooperate in facilitating such discussions.

**5.4 Continued Efforts.** Each party hereto shall use commercially reasonable efforts to (a) take all action reasonably necessary to consummate the transactions contemplated by this Agreement, and (b) take such steps and do such acts as may be necessary to keep all of its representations and warranties true and correct as of the Closing Date with the same effect as if the same had been made, and this Agreement had been dated, as of the Closing Date. In addition, each of the parties agrees that it shall (i) give any required notices to third parties, (ii) use its commercially reasonable efforts to obtain all required Consents, and (iii) make any filings with, and use its commercially reasonable efforts to obtain, any required Consents of any Governmental Authority.

**5.5 Carry on Business in Regular Course.** Prior to the Closing Date, Sellers shall (a) carry on the Business, and use the Purchased Assets, in the ordinary course consistent with prudent business practice; (b) maintain and repair the Purchased Assets in accordance with prudent business practice, and maintain adequate fire and casualty and general liability insurance for the Purchased Assets; (c) not acquire or dispose of any Purchased Assets or Purchased Contracts or enter into any contract, agreement or commitment with respect thereto (other than in the ordinary course of business) without the prior written consent of Buyer, (d) not amend, modify or terminate any Purchased Contract without the prior written consent of Buyer, and (e) comply with all Applicable Laws and with all Governmental Approvals.

**5.6 Cooperation.** Prior to the Closing Date, Buyer and Sellers shall cooperate in connection with the giving of any notices to any Governmental Authority or securing any Governmental Approval required by Applicable Law or any other Consent in

connection with the consummation of the transactions contemplated under this Agreement.

**ARTICLE VI**  
**CONDITIONS PRECEDENT TO THE OBLIGATIONS OF BUYER**

The obligations of Buyer to consummate the transactions contemplated hereby shall be subject to the fulfillment, on or prior to the Closing Date, of the following conditions:

**6.1 Representations; Performance.** The representations and warranties of Sellers contained in this Agreement shall be true and correct in all material respects on and as of the date hereof and on and as of the Closing Date. Sellers shall have duly performed and complied with all agreements required by this Agreement to be performed or complied with by it prior to or on the Closing Date.

**6.2 No Material Adverse Change.** During the period from the date hereof through the Closing Date, there shall not have occurred any condition or fact which, individually or in the aggregate, may materially adversely affect the Purchased Assets, the prospects of the Business, or the ability of Buyer to conduct the Business with the Purchased Assets following Closing.

**6.3 Proceedings and Consents.** All proceedings to be taken by Sellers in connection with the transactions contemplated by this Agreement, and all documents incident thereto, shall be reasonably satisfactory in form and substance to Buyer and Buyer's counsel, and Sellers shall have made available to Buyer and supplied to Buyer upon request, the originals or true and correct copies of all documents or other information which Buyer may reasonably request in connection with the transactions contemplated by this Agreement.

**6.4 Deliveries at Closing.** Sellers shall have delivered to Buyer the documents required under Section 3.2 hereof.

**6.5 Sale Free and Clear.** Sellers shall have taken all necessary actions to obtain the Sale Order in order to effectuate the sale, transfer and assignment of the Purchased Assets to Buyer free and clear of all Liabilities (other than the Assumed Liabilities).

**6.6 Purchased Contracts.** Seller shall have caused all obligations of Seller under the Purchased Contracts to be fully performed, satisfied and/or paid, including but not limited to, obligations due to be performed prior to the Effective Time of Closing or due to be performed on or after the Effective Time of Closing with respect to events which precede the Effective Time of Closing (e.g. Liabilities for property and other taxes). All such obligations shall be fully performed, satisfied, and/or paid so that Buyer shall be in the position of assuming the Purchased Contracts as if such Purchased Contracts had not been in existence or effective prior to the Effective Time of Closing.

**6.7 Dillard's Agreement.** Buyer shall have received assurances of continued orders from Dillard's in a form and substance acceptable to Buyer.

**6.8 Financing Terms.** The terms and conditions under which Buyer assumes that portion of the Bank Debt identified in Section 2.3(a) shall be acceptable to Buyer in Buyer's sole and absolute discretion.

**6.9 Bankruptcy Court Approval.** The Bankruptcy Court shall have entered the Sale Order, which order shall have become final and non-appealable.

**6.10 Reports; Title Insurance.** Buyer shall have received title reports, environmental reports and title insurance with respect to the Seller Real Property, which reports and insurance shall be acceptable to Buyer in Buyer's sole and absolute discretion.

Buyer shall have the right in its sole and absolute discretion to waive any of the foregoing conditions and proceed to Closing.

## **ARTICLE VII** **CONDITIONS PRECEDENT TO THE OBLIGATIONS OF SELLERS**

The obligation of Sellers to consummate the transactions contemplated hereby shall be subject to the fulfillment (or waiver by Sellers), on or prior to the Closing Date, of the following conditions:

**7.1 Representations; Performance.** The representations and warranties of Buyer contained in this Agreement shall be true and correct in all respects on and as of the date hereof and on and as of the Closing Date. Buyer shall have duly performed and complied with all agreements required by this Agreement to be performed or complied with by it prior to or on the Closing Date.

**7.2 Bankruptcy Court Approval.** The Bankruptcy Court shall have entered the Sale Order.

## **ARTICLE VIII** **ACTIONS BY SELLER AND BUYER AFTER THE CLOSING**

**8.1 Further Assurances.** Both before and after the Closing Date, each party will cooperate in good faith with the other and will take all appropriate action and execute any documents, instruments or conveyances of any kind which may be reasonably necessary or advisable to carry out any of the transactions contemplated hereunder.

**8.2 Liability for Taxes.** Subject to § 1146(c) of the Bankruptcy Code, Sellers shall be responsible for the timely payment of all transfer, conveyance, excise, recording, license and other similar taxes and fees (except sales taxes) arising out of or in

connection with or attributable to the transactions effected pursuant to this Agreement, and Buyer shall be responsible for the timely payment of all sales taxes arising out of or in connection with or attributable to the transactions effected pursuant to this Agreement.

**8.3 Cooperation.** After the Closing Date, Sellers shall immediately remit to Buyer upon receipt (i) all payments received by Sellers with respect to accounts receivable acquired by Buyer hereunder, and (ii) all bills and invoices received by Sellers with respect to Assumed Liabilities assumed by Buyer hereunder.

## **ARTICLE IX** **TERMINATION**

**9.1 Termination.** This Agreement may be terminated at any time prior to the Closing Date:

- (a) by the written agreement of Buyer and Sellers;
- (b) by Buyer, by written notice to Seller, if the transactions contemplated hereby shall not have been consummated pursuant hereto by 5:00 p.m. Tulsa, Oklahoma time on June 30, 2003;
- (c) by Buyer, by written notice to Sellers, if (i) the representations and warranties of Sellers shall not have been true and correct in all material respects as of the date hereof, or (ii) Sellers breach any of their covenants or agreements contained in this Agreement (and such breach, if curable, is not cured within fifteen (15) days after written notice thereof is provided to Sellers);
- (d) by Sellers, by written notice to Buyer, if (i) the representations and warranties of Buyer shall not have been true and correct in all material respects as of the date hereof, or (ii) Buyer breaches any of its covenants or agreements contained in this Agreement (and such breach, if curable, is not cured within fifteen (15) days after written notice thereof is provided to Buyer); or
- (e) in the event the Bankruptcy Court denies for any reason the Sale Motion.

**9.2 Effect of Termination.** In the event of the termination of this Agreement pursuant to the provisions of Section 9.1, this Agreement shall become void and have no further legal force or effect, without any liability to any Person in respect hereof or of the transactions contemplated hereby on the part of any party hereto, or any of its directors, officers, employees, agents, consultants, representatives, advisers, stockholders or Affiliates, except as specified in Section 1.2.5 or for any liability resulting from such party's breach of this Agreement.

## **ARTICLE X** **MISCELLANEOUS**



**10.1 Employees.** The parties agree that, from and after the date of this Agreement, (i) each Seller shall notify Buyer of any planned meetings with such Seller's employees to announce the transactions described in this Agreement and provide Buyer an opportunity to participate in any such meetings, (ii) each Seller agrees not to make any statements, promises or commitments to such Seller's employees regarding ongoing employment or regarding the terms of such employment with Buyer, and (iii) Buyer may communicate with the employees of each Seller about potentially hiring such employees. Buyer's discussion of employment with any employee of either Seller is not a promise that any such employee will be offered employment or, if an offer is extended, that such offer will be at the same salary or wages or the same benefits, or that any such employee will be retained in the same position or jobs, nor a commitment as to duration of employment. Nothing in this Agreement shall (i) confer upon any employee or former employee of either Seller any right with respect to continued employment by Buyer, or (ii) interfere with any right Buyer may have after the Closing to (A) terminate employment of any employee at any time, with or without cause or notice, or (B) establish or modify any of the terms and conditions of the employment (including any compensation or benefit plan, policy, program or arrangement or the terms of any collective bargaining agreement) of any employee, in the exercise of its sole and absolute discretion. The employees hired by Buyer shall be subject to all of Buyer's employment, personnel and wage policies. Buyer shall have no obligation or liability whatsoever as to any employee, former employee or independent contractor of either Seller with respect to any matter arising from his or her employment by such Seller or the termination of such employment by such Seller at or prior to Closing, including without limitation, allowed and unpaid compensation, severance or vacation pay and pension, retirement, employee welfare or other benefits, claims of any employee under any federal, state or local law designed to protect employees, including equal employment laws, wrongful discharge laws, the Worker Adjustment and Retraining Notification Act (29 U.S.C. 2101, et seq.), the Employee Retirement Income Security Act of 1974, the Multiemployer Pension Plan Amendments Act of 1980 and the Internal Revenue Code of 1986, as amended or other rights, and each Seller jointly and severally agrees that any and all obligations of either Seller with respect to such matters shall not be Assumed Liabilities, and shall be Excluded Liabilities and remain the obligations and liabilities of Sellers and be timely performed and/or paid by Sellers. Each Seller shall be responsible for any legally mandated continuation of health care coverage and related notices for any employee or former employee of such Seller who has a loss of health care coverage due to a qualifying event on or before the Closing Date, including but not limited to in connection with the transactions contemplated herein.

**10.2 Expenses.** Except as provided herein, Sellers, on the one hand, and Buyer, on the other hand, shall each bear its respective expenses, costs and fees (including attorneys, auditors, and financing commitment fees) in connection with the transactions contemplated hereby, including the preparation, execution and delivery of this Agreement and compliance herewith, whether or not the transactions contemplated hereby are ultimately consummated. Sellers shall bear the expense of obtaining any Consents necessitated by any contract, agreement or Applicable Law to which it is a

party or by which it is bound, and Buyer shall likewise bear the expense of obtaining any Consents necessitated by any contract, agreement or Applicable Law to which it is a party or by which it is bound.

**10.3 Severability.** If any provision of this Agreement, including any phrase, sentence, clause, Section or subsection is inoperative or unenforceable for any reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatsoever.

**10.4 Survival of Covenants and Agreements.** All covenants and agreements of the parties set forth in Article VIII hereof shall survive the Closing. The Representations and Warranties set forth in Article IV and Article V shall not survive the Closing.

**10.5 Notices.** All notices, requests, demands, waivers and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (a) delivered personally, (b) sent by next-day or overnight mail or delivery, or (c) sent by telecopy or telegram.

(i) if to Buyer to:

John McNicholas  
1229 East 29<sup>th</sup> Place  
Tulsa, Oklahoma 74114  
Facsimile: (410) 823-6708

with a copy to:

Venable, Baetjer and Howard, LLP  
1800 Mercantile Bank & Trust Building  
2 Hopkins Plaza  
Baltimore, Maryland 21201  
Attention: Michael J. Baader, Esq.  
Facsimile: (410) 244-7742

(ii) if to Sellers to:

William C. Johnson  
2900 E. Apache  
Tulsa, Oklahoma 74110-2251  
Facsimile: (918) 834-6637

with a copy to:

Morrel, West, Saff, Craige & Hicks, Inc.  
5310 East 31<sup>st</sup> Street, Suite 1100  
Tulsa, Oklahoma 74135-5004  
Attention: Mark A. Craige  
Facsimile: (918) 663-1383  
e-mail address: mark@law-office.com

or, in each case, at such other address as may be specified in writing to the other parties hereto.

All such notices, requests, demands, waivers and other communications shall be deemed to have been received (x) if by personal delivery on the day after such delivery, (y) if by next-day or overnight mail or delivery, on the day delivered, (z) if by telecopy or telegram, on the next day following the day on which such telecopy or telegram was sent, provided that a copy is also sent by certified or registered mail.

**10.6 Headings.** The headings contained in this Agreement are for purposes of convenience only and shall not affect the meaning or interpretation of this Agreement.

**10.7 Remedies.** The parties hereto recognize that in the event either party fails to fulfill or perform any of its covenants or agreements set forth in, or contemplated by, this Agreement, monetary damages alone will not be adequate. Each party shall therefore be entitled, in addition to any other remedies that may be available, to seek injunctive relief, specific performance or any other form of relief to remedy a breach or threatened breach of this Agreement and to enforce the terms of this Agreement. Each party hereto irrevocably hereby waives any defense that there is an adequate remedy at law. The existence of this right shall not preclude or otherwise limit the applicability or exercise of any other rights and remedies that either party hereto may have at law or in equity.

**10.8 Entire Agreement.** This Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, between the parties with respect to the transactions contemplated in this Agreement. All Schedules and Exhibits attached to this Agreement shall be deemed part of this Agreement and incorporated herein, where applicable as if fully set forth herein.

**10.9 Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall together constitute one and the same instrument.

**10.10 Governing Law.** This Agreement shall be governed in all respects, including as to validity, interpretation and effect, by the internal laws of the State of Oklahoma, without giving effect to the conflict of laws rules thereof.

**10.11 Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and permitted assigns including, but not limited to, any Chapter 11 or Chapter 7 trustee that may hereafter be appointed in Sellers' Bankruptcy Case.

**10.12 Assignment.** Neither Seller shall have the right to assign any or all of its rights or to delegate any or all of its obligations under this Agreement. Buyer shall have the right to assign any or all of its rights, and delegate any and all of its obligations, under this Agreement to one or more affiliates in Buyer's sole discretion.

**10.13 No Third Party Beneficiaries.** Nothing in this Agreement shall confer any rights upon any Person other than the parties hereto and their respective successors and permitted assigns.

**10.14 Amendment; Waivers, etc.** No amendment, modification or discharge of this Agreement, and no waiver hereunder, shall be valid or binding unless set forth in writing and duly executed by the party against whom enforcement of the amendment, modification, discharge or waiver is sought. Any such waiver shall constitute a waiver only with respect to the specific matter described in such writing and shall in no way impair the rights of the party granting such waiver in any other respect or at any other time. Neither the waiver by any of the parties hereto of a breach of or a default under any of the provisions of this Agreement, nor the failure by any of the parties, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right or privilege hereunder, shall be construed as a waiver of any other breach or default of a similar nature, or as a waiver of any of such provisions, rights or privileges hereunder. The rights and remedies herein provided are cumulative and are not exclusive of any rights or remedies that any party may otherwise have at law or in equity.

**10.15 Interpretation.** The parties acknowledge that they have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. Unless the context requires otherwise, all words used in this Agreement in the singular number shall extend to and include the plural, all words in the plural number shall extend to and include the singular and all words in any gender shall extend to and include all genders.

**[Remainder of page intentionally left blank.]**


**IN WITNESS WHEREOF**, the parties have duly executed this Agreement as of the date first above written.

**WITNESS/ATTEST:**

Paul Vern

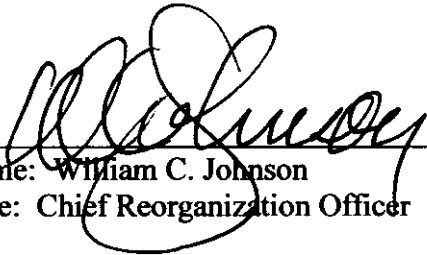
**SELLERS:**

**OKLAHOMA FIXTURE COMPANY**

By:  (SEAL)  
Name: William C. Johnson  
Title: Chief Reorganization Officer

**OKLAHOMA INSTALLATION COMPANY**


Paul Vern

By:  (SEAL)  
Name: William C. Johnson  
Title: Chief Reorganization Officer

**BUYER:**

**PENLOYD, LLC**

Paul Vern

By:  (SEAL)  
Name: John McNicholas  
Title: President and Chief Executive Officer

**ASSET PURCHASE AGREEMENT**  
**LIST OF SCHEDULES**

**Schedule**

1.1	Seller Real Property
2.1(a)	Machinery, Equipment, Furniture
2.1(e)	Existing Purchased Contracts
2.2(d)	Excluded Real Property
4.1.5	Litigation
4.1.6	Purchased Contracts Information
4.1.9	Real Property Information
4.1.10	Environmental Matters
4.1.11	Customers
4.1.12	Suppliers
4.1.13	Tax Issues
4.1.14	Absence of Changes
4.1.15	Employee Matters

## **SCHEDULE 1.1**

### **SELLERS' REAL PROPERTY**

#### **OKLAHOMA FIXTURE COMPANY:**

1. Real Estate: 74.81 acres, more or less, with building of approx. 369,692 square feet, and all improvements thereon; Part of Sec 29, T20N, R13E, Tulsa County, Oklahoma (Plant).

2. 10.2852 acre/448,025 square foot tract of vacant land located at approx. 5800 E. 11<sup>th</sup> St., Tulsa, OK (Hudson Street Property), more particularly described as follows:

Block 67 and the South 30.43 feet of vacated street to the North thereof, less the South 200 feet thereof of Block 67, Glenhaven, an addition to the City of Tulsa, Tulsa County, State of Oklahoma; and

Block 66 and the South 30.43 feet of vacated street to the North thereof, Glenhaven, an addition to the City of Tulsa, Tulsa County, State of Oklahoma; and

Lot 2 and the North 30.43 feet of the vacated street on the South thereof of Block 53, Glenhaven amended, an addition to the City of Tulsa, Tulsa County, State of Oklahoma; and

Lot 8 and the North 30.43 feet of the vacated street on the South thereof of Block 4, accumulation of a part of Glenhaven and a part of Glenhaven amended, an addition to the City of Tulsa, Tulsa County, State of Oklahoma; and

Lot 7 and the North 30.43 feet of the vacated street on the South thereof of Block 4, accumulation of a part of Glenhaven and a part of Glenhaven amended, an addition to the City of Tulsa, Tulsa County, State of Oklahoma; and

Lot 6 and the North 30.43 feet of the vacated street on the South thereof of Block 4, accumulation of a part of Glenhaven and a part of Glenhaven amended, an addition to the City of Tulsa, Tulsa County, State of Oklahoma; and

Lot 5 of Block 4, accumulation of a part of Glenhaven and a part of Glenhaven amended, an addition to the City of Tulsa, Tulsa County, State of Oklahoma; and

Lot 4 of Block 4, accumulation of a part of Glenhaven and a part of Glenhaven amended, an addition to the City of Tulsa, Tulsa County, State of Oklahoma; and

The South 46 feet of Lot 3 of Block 4, accumulation of a part of Glenhaven and a part of Glenhaven amended, an addition to the City of Tulsa, Tulsa County, State of Oklahoma;

The total of which comprises 10.2852 acres of Section 3, T-19-N, R-13-E, Tulsa County.

3. A tract of land situated in Tulsa County, Oklahoma, more particularly described as: West 75 feet of North 163.6 feet, Block 68 and East 75 feet of Block 69 less South 140 feet, Glenhaven Addition; South 140 feet of Block 68 and South 140 feet of Block 69, Glenhaven Addition; Block 71, Glenhaven Addition; together with all buildings and improvements thereon, consisting of approximately 4.1237 acres, more or less, with a building of approximately 104,730 square feet, with a street address of 924 South Hudson, Tulsa, Oklahoma (Glass Plant).

4. Real Estate: 2.30 acres and office and warehouse buildings situated thereon located at 245 New Porter Pike Road, Bowling Green, Kentucky, and further described as Tax Map 51A-06, parcels 2 and 3 within the City of Bowling Green, Kentucky, more particularly described as:

**Parcel No. 1:** Beginning at a point in the right of way of Porter Pike-KY 1402, said point being approximately 1,864 feet from the south right of way of US 31-W; thence S 33 deg. 24 min. E 125 feet to a point in the right of way of Porter Pike-KY 1402; thence to the right S 56 deg. 36 min. W 401.19 feet to a point; thence to the right N 33 deg. 24 min. W 125 feet to a point; thence to the right N 56 deg. 36 min. E 401.19 feet to the point of beginning, containing 1.1513 acres and being Lot No. 3, of the Minor Subdivision Plat, recorded in Minor Subdivision Plat Book 11, Page 38, in the Office of the Warren County Court Clerk.

**Parcel No. 2:** Beginning at a point in the right of way in Porter Pike-KY 1402, said point being approximately 1,739 feet from the south right of way of US 31-W; thence S 33 deg. 24 min. E 125 feet to a point in the right of way of Porter Pike-KY 1402; thence to the right S 56 deg. 36 min. W 401.19 feet to a point; thence to the right N 33 deg. 24 min. W 125 feet to a point; thence to the right N 56 deg. 36 min. E 401.19 feet to the point of beginning, containing 1.1513 acres and being Lot No. 2, of the Minor Subdivision Plat, recorded in Minor Subdivision Plat Book 11, Page 38, in the Office of the Warren County Court Clerk.

This being the same property conveyed to The H. T. Hackney Co. from O'Neil Harrell and wife, Sue Harrell, by deed dated 20 January 1988 and of record in Deed Book 595, Page 766, in the office of the Warren County Clerk.

5. Lots Five (5) and Six (6), Block Three (3), Unit Three (3), Keystone West Lake Estates, being a tract of land situated in Section 9, Township 20 North, Range 9 East, Pawnee County, Oklahoma (Lake Lots).

6. Real Estate: 14.973 acres located in Warren County, Kentucky, more fully described as follows:

Beginning at an iron pin, being a corner common to Roadway Express, Inc. and in the north right-of-way line of Plum Springs Loop, thence along the right-of-way of Plum Springs Loop, S 61° 33' 40" W, 409.44 feet to an iron pin, thence leaving the right-of-way and turning right, N 40° 45' 40" W, 921.89 feet to an iron pin, thence turning right, N 49° 14' 20" E, 800.00 feet to an iron pin in the west right-of-way line of Commerce Street, thence turning right with the right-of-way of Commerce Street, S 40° 45' 40" E, 665.00 feet to an iron pin, thence leaving the right-of-way and turning right, S 49° 14' 20" W, 400.00 feet to an iron pin, thence turning left S



40° 45' 40" E, 344.30 feet to the point of beginning, containing 14.973 Acres or 652,238 square feet according to survey by Jack C. VanMeter, Registered Land Surveyor No. 804, dated November 10, 1989. The foregoing description covers all of Lot Nos. 5, 6, 7, 8, 9, 10 and a portion of Lot No. 11 as shown on Plat Book 11, Page 54, and also Lots No. 30 and 10 and the portion of Lot 11 as shown on Plat Book 21, Page 98 in the office of the Warren County Clerk.

Being the same property conveyed to C. David Downey and wife, Bonita H. Downey, from Western Kentucky Coca-Cola Bottling Co., Inc., a Kentucky corporation, by General Warranty Deed dated July 19, 1989, and recorded in Deed Book 610, Page 432, Warren County Court Clerk's Office.

**OKLAHOMA INSTALLATION COMPANY**

1. Lots 2 and 3 located at 924 S. Hudson, Tulsa, OK, Block 70, Glen Haven Addition together with buildings and improvements thereon, more particularly described as follows:

Block 70, Glenhaven Addition and Lot 1 and North 200 feet of Lot 12, Block 1, Sandford Addition together with all Buildings and Improvements thereon; and

The North 163.6 feet, Block 68, Less the West 75 feet of North 163.6 feet, Block 68, Glenhaven Addition, together with all Buildings and Improvements thereon.

## **SCHEDULE 2.1(a)**

### **Machinery, Equipment, Furniture**

All machinery, equipment, furniture and fixtures of Sellers including, but not limited to, all machinery, equipment, furniture and fixtures of Sellers identified in the Schedules in the Bankruptcy Cases for OFC and OIC.

## **SCHEDULE 2.1(e)**

### **Purchased Contracts**

Dillard's Department Stores, Inc. 1600 Cantrell Little Rock, AR 72201	Any and all Dillard's contracts but not including any pre-Petition Date cure obligations owed to Dillard's, if any
OFC & OIC Customers	All purchase orders of OFC and OIC for pre-petition and post-petition fixtures and/or installation services
Bass Pro	All contracts
R.A. Woods, Individually, R.A. Woods, Inc. d/b/a Cornerstone Solid Surfaces	Asset Purchase and Sale Agreement and all rights and benefits including Contracting Agreements, Employment Agreements for Richard A. Woods, Royalty Agreements for R.A. Woods and R.A. Woods, Inc., Covenant not to Compete, Commission Agreement and related agreements
BMI 913 N. Broadway Oklahoma City, OK 73102	Lease No. 1750480 dated April 1, 2002, terminating March 31, 2006, covering a Canon IR-2200 #MPL Copier
BMI 913 N. Broadway Oklahoma City, OK 73102	Lease No. 1750250 dated September 19, 2002, terminating September 18, 2006, covering a Canon IR-330S copier
BMI 913 N. Broadway Oklahoma City, OK 73102	60 mo lease on Canon Copier
Metrocall Wireless 3202 S. Memorial Tulsa, OK 74145	Contract for Pagers, Account No. 298 AOOVCV
Xerox Engineering Systems c/o PNC Bank P.O. Box 828137 Philadelphia, PA 19182	Contract #097931 dated June 4, 2001 for a term of 60 months covering 8830 DDS Digital DOC System S/N 5DY020854
ABB Business Finance One Research Drive Westboro, MA 01581	60 mo lease on meter and scale

Dolphin Capital P.O. Box 56 2061 N. Marley Street Moberly, MO 65270	60 mo equipment lease
HNC Software, Inc. 5935 Cornerstone Court West San Diego, CA 92121-3728	AT&T Network Services #9312132
David Corporation Dept. CH 10667 Palatine, IL 60055-0667	annual software support
Internet Commerce Corporation P.O. Box 26908 New York, NY 10098-6908	Support EZEDI Upgrade to Vs 7; Customer No. 96495
Southwestern Bell Telephone	Contract of Service Agreement effective Dec. 5, 2000 for a term of 5 years for business access lines

## **SCHEDULE 4.1.5**

### **Litigation**

The following cases including the Bankruptcy cases for OFC and OIC and also including all Worker's Compensation Cases as listed on the Bankruptcy Schedules for OFC and OIC, Statements of Financial Affairs, Exhibits 4-A in each of the Bankruptcy Cases.

#### **CASES PENDING FOR OKLAHOMA FIXTURE COMPANY:**

##### **UNITED STATES OF APPEAL FOR THE TENTH CIRCUIT**

1. *National Labor Relations Board vs. Oklahoma Fixture Company & Oklahoma Installation Company; Case No. 01-9518.*
2. *National Labor Relations Board vs. Oklahoma Fixture Company; Case No. 01-9516.*

##### **TULSA COUNTY DISTRICT COURT**

1. *Carmin Funding Corporation vs. Oklahoma Fixture Company; Case No. CJ-2002-00943.* A breach of contract action where Plaintiff is attempting to collect \$37,557.12.
2. *Craters & Freighters, Inc. vs. Oklahoma Fixture Company; Case No. CJ-2003-0122.* A breach of contract action where Plaintiff is attempting to collect \$12,230.15.
3. *Kenby Oil Company vs. Oklahoma Fixture Company; Case No. SC-03-1412.* A breach of contract action where Plaintiff is attempting to collect \$2,722.43.
4. *Prime Industrial Recruiters, Inc. vs. Oklahoma Fixture Company; Case No. CJ-2003-00521.* A breach of contract action where Plaintiff is attempting to collect \$79,268.37.
5. *Recruiting Specialists, Inc. v. Oklahoma Fixture Company; Case No. CJ-2003-0121.* A breach of contract action where Plaintiff is attempting to collect \$72,254.87.
6. *Ryder Integrated Logistics f/k/a Ryder Distribution Resources, Inc. vs. Oklahoma Fixture Company; Case No. CJ-2002-02025.* A breach of contract action where Plaintiff is attempting to collect \$933,297.86 plus an attorney fee of \$279,989.36.
7. *Ryder Truck Rental, Inc. vs. Oklahoma Fixture Company; Case No. CJ-2002-03373.* A breach of contract action where Plaintiff is attempting to collect \$34,225.43 plus an attorney fee of \$10,267.63.

**I. Pending Cases for Oklahoma Fixture Company as of January 31, 2003:**

1. *Mark A. Cavins, Plaintiff/Appellant/Counter Appellee, vs. Oklahoma Fixture Company, an Oklahoma corporation, Oklahoma Installation Company, an Oklahoma corporation, Ronnie G. Line, an individual, David F. James, an individual, and James, Potts & Wulfers, Inc., an Oklahoma corporation, Defendants/Appellees/Counter Appellants; Case No. 96455 (consolidated with No. 97737, in the Court of Civil Appeals of the State of Oklahoma, Division III).*
2. *Oklahoma Fixture Company, an Oklahoma corporation, Plaintiff, vs. Ortech Solutions Company, a Delaware corporation, Technology Solutions Company, a Delaware Corporation, i2 Technologies, Inc., a Delaware corporation, and Pricewaterhousecoopers, L.L.P., a Delaware limited liability company, Defendants, Case No. CJ-2001-02467, in the District Court of Tulsa County, Oklahoma.*
3. *Oklahoma Fixture Company, an Oklahoma corporation, Plaintiff, vs. Henricks Jewelry, Inc., a Florida corporation, and the S/M/A Design Group International, Inc., a Canadian corporation, Defendants, Case No. 99-6789CA-LG, in the Circuit Court of the Twentieth Judicial District in and for Lee County, Florida.*

**CASE PENDING FOR OKLAHOMA INSTALLATION COMPANY**

**Cases before the National Labor Relations Board**

1. *Oklahoma Installation Company & Carpenters District Council of Kansas City & Vicinity, Case No. 17-CA-21668.*

**SCHEDULE 4.1.6**

**Purchased Contracts Information**

None



**SCHEDULE 4.1.9**

**Real Property Information**

None

**SCHEDULE 4.1.10**

**Environmental Matters**

None

**SCHEDULE 4.1.11**

**Customers**

See attached lists.

Sch. 4.1.11

**TOP TEN CUSTOMER LIST & VOLUMES**

(1)	Dillard's	\$28,001,513.72
(2)	Target	\$2,046,749.42
(3)	ISCGS	\$938,808.28
(4)	Trinity Yachts	\$621,617.00
(5)	Buckner & Moore	\$558,000.00
(6)	Lozier	\$368,000.00
(7)	Hunt Const.	\$300,384.00
(8)	CDI	\$249,158.04
(9)	American Bridge	\$244,768.00
(10)	Harman Stewart	\$228,383.12
	<b>TOTAL:</b>	<b>\$34,436,185.88</b>

## **SCHEDULE 4.1.12**

### **Suppliers**

See attached lists.

Sch. 4. 1. 12

Oklahoma Fixture Company  
Vendors Paid in 2002

Vendor Name	Amt Paid
CEDAR CREEK WHISLE INC	2,584,777.04
F AND M BANK AND TRUST	2,022,183.67
PREMIERE METAL CONCEPTS	1,862,973.81
WMA METAL FABRICATION	1,701,894.44
VEN TECH LTD	832,120.43
NORTH AMERICAN VAN LINES	757,823.18
UNICARE/MASS MUTUAL LIFE	639,138.48
NORTH CAROLINA DEPARTMENT OF REVENUE	617,344.40
AM SOUTH BANK	534,704.47
OKLAHOMA FIXTURE COMPANY (workers Comp)	518,803.88
RICH AND CARTMILL INC	493,968.90
CMS N AMERICA	437,830.47
STYLMARK INC	411,188.44
WINTHROP RESOURCES CORP	389,424.47
AMERICAN EXPRESS	383,734.75
CARPENTERS JOINT TRUST	330,151.93
GUARDIAN INDUSTRIES	242,193.80
ROLL FORMING CORP	240,364.22
BECKER ACROMA INC	238,888.00
RYDER DEDICATED LOGISTICS	238,828.88
NEVADA DEPARTMENT OF TAXATION	236,044.03
INDIANA ARCHITECTURAL PLYWOOD INC	228,880.44
TREASURER OF STATE OF OHIO	228,348.91
STANDBY PERSONNEL	225,247.78
SCOVIL AND SIDES HARDWARE CO	215,485.18
OKLAHOMA NATURAL GAS CO	207,928.43
AMERICAN ELECTRIC POWER	204,784.02
VIRACON	187,721.97
EFCO CORP	182,882.82
ARCH MIRROR NORTH	171,457.33
OKLAHOMA TAX COMMISSION	168,501.11
FORMWOOD INDUSTRIES	155,950.51
PUBLIC SERVICE CO OF OKLAHOMA	154,911.82
REEVE STORE EQUIPMENT CO	151,768.17
PREMIUM FINANCING SPECIALISTS INC	146,123.60
VIRGINIA DEPT OF TAXATION	143,884.87
GENERAL DISTRIBUTORS	138,188.80
JORDAN SUPPLY	127,354.14
TULSA COUNTY TREASURER	126,919.10
TRS-THE RECRUITING SPECIALISTS	123,189.58
ONEIL WHOLESALE FLOORING INC	122,230.43
AFGD, INC	120,379.93
RED BUD GLASS	118,054.12
PPG INDUSTRIES INC	117,118.62
KENTUCKY ECONOMIC DEVELOPMENT	116,872.05
BECKER SYNTHEMA, INC	115,844.78
VVP AMERICA INC	112,554.91

Oklahoma Fixture Company  
Vendors Paid in 2002

Vendor Name	Amt Paid
HEHR GLASS CO	111,524.81
EYKON WALLSOURCE	111,180.04
JH&A STORE FIXTURES	111,002.90
TULSA COUNTY DISTRICT COURT CLERK	109,240.67
FRANK PAXTON LUMBER CO	107,073.11
GUARDIAN LIFE INSURANCE CO OF AMERICA	106,092.94
ORACLE CORP	103,792.34
KENTUCKY EMPLOYERS MUTUAL INSURANCE	97,704.24
DONAHUE, GALLAGHER, WOODS & WOOD, LLP	94,214.79
NATIONAL WALLCOVERING	93,223.11
MN DEPT OF REVENUE	88,745.00
CARPENTERS LOCAL #943	87,887.18
HUNZICKER BROTHERS INC	84,848.91
TULSA PLASTICS	83,735.81
RAP SECURITY INC	82,015.08
CITY CLERK - TREASURER	79,290.30
MCI WORLDCOM	70,763.49
CLC EQUIPMENT CO	70,272.21
KIRBY-SMITH MACHINERY INC	68,077.78
UNIVERSITY OF TULSA	68,886.00
AMERICAN WASTE CONTROL INC	67,622.34
TRUGREEN-LAWN CARE REGIONAL	67,364.30
FORTIS BENEFITS INSURANCE CO.	66,873.42
STEWART STAINLESS	66,019.75
SW AVIATION SPECIALTIES	66,669.12
IDMD MANUFACTURING	65,738.88
MIDWEST TROPHY	65,035.80
PEERLESS PRODUCTS INC	64,401.14
AWLFAB CORP	63,632.00
CITY OF TULSA	63,474.88
DEPT OF HUMAN SERVICES	63,280.39
WARREN RURAL ELECTRIC CO-OP	61,782.74
MARLITE	59,106.82
DALLAS DESIGN CENTER	58,508.47
PRIME INDUSTRIAL RECRUITERS	58,480.91
BARTCO LIGHTING	57,904.49
GEORGE CRAIG	57,408.02
HUTTIG SASH AND DOOR CO	56,866.94
KENSTAN LOCK & HARDWARE	56,353.84
RENTAL SERVICE CORP.	55,897.16
CLAREMORE INDUSTRIAL TOOL CO	55,438.70
MAHARAM FABRIC CORP	55,361.30
KANSAS DEPT OF REVENUE	54,900.93
KNOLL TEXTILES	54,888.60
BAER SUPPLY CO	53,781.62
PRICEWATERHOUSECOOPERS	53,100.00
ARIZONA DEPT OF REVENUE	53,064.98
ACCOUNTING PRINCIPALS	52,913.48

**Oklahoma Fixture Company  
Vendors Paid in 2002**

Vendor Name	Amt Paid
STEPHEN L ANDREW & ASSOCIATES ATTORNEYS AT LAW	82,224.94
AVAYA	81,343.21
CASTERS OF OKLAHOMA	80,719.38
GEORGIA DEPT OF REVENUE	50,527.78
THINK GLASS	80,498.45
NEW ENGLAND MUTUAL LIFE INSURANCE CO	80,347.00



**SCHEDULE 4.1.13**

**Tax Issues**

[None]

## **SCHEDULE 4.1.14**

### **Absence of Changes**

None other than ordinary course of business matters and modification of three (3) Union contracts with OFC.

## **SCHEDULE 4.1.15**

### **Employee Matters**

See three (3) National Labor Relations Board Matters identified in Schedule 4.1.5.

177 bnc

**FILED**

MAY 09 2003

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

MICHAEL L. WILLIAMS, CLERK  
U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF OKLAHOMA

**IN RE:**

**OKLAHOMA FIXTURE COMPANY,**

**Case No. 03-00476-M  
(Jointly Administered  
Chapter 11)**

**and**

**OKLAHOMA INSTALLATION COMPANY,**

**Case No. 03-00493-M  
(Chapter 11)  
(Jointly Administered with  
Case No. 03-00476-M)**

**Debtors and Debtors in Possession.)**

**ORDER ESTABLISHING BIDDING PROCEDURES,  
MANNER AND FORM OF NOTICE FOR SALE OF ASSETS OF DEBTORS**

NOW, on the 25<sup>th</sup> day of April, 2003, this matter came on before me, the undersigned Judge of the United States Bankruptcy Court, for an evidentiary hearing on the Motion filed on March 31, 2003 by Oklahoma Fixture Company ("OFC") and Oklahoma Installation Company ("OIC"), Debtors and Debtors in Possession (collectively referred to herein as the "Debtors") (the "Motion"), moving this Court for the entry of an order establishing certain buyer bidding and sale procedures (the "Sale Procedures") for the proposed sale of the Debtors' principal assets and the assumption and assignment of certain executory contracts and unexpired leases (collectively, the "Sale Assets") and on the Objections to the Motion filed by the Office of the United States Trustee ("UST") and Winthrop Resources Corporation ("Winthrop"). After conducting an evidentiary hearing wherein the Court heard the testimony of the witnesses and received the exhibits offered by the parties into evidence, the Court permitted the parties to file post-hearing memoranda in support of their respective positions and took the matter under

advisement. The Court conducted a telephonic hearing on May 2, 2003 wherein the Court made findings of fact and conclusions of law on the record, all of which are incorporated herein by reference and granted the Motion. The Court directed the Debtors to prepare this Order memorializing the Court's ruling, which the Court hereby enters as follows:

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. §157(b). Venue is proper in this Court pursuant to 28 U.S.C. §§1408 and 1409.

2. Proper notice of the Motion was given and two Objections were filed. The Objection of Winthrop was resolved by stipulation of the parties as set forth in the Debtors' Post-Hearing Memorandum in support of the Motion filed on April 29, 2003 (the "Debtors' Memorandum"). The Objection of the UST is overruled.

3. Based upon the findings of fact and conclusions of law made on the record, the Court hereby grants the Motion.

4. On January 31, 2003 and February 3, 2003 OFC and OIC filed their respective petitions for relief under Chapter 11 of the Bankruptcy Code (collectively, the "Petition Date").

5. Debtors remain in possession of their assets and continue to manage their properties as Debtors in Possession pursuant to §§1107 and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner in these cases.

6. The Debtors expect that they will enter into an Asset Purchase Agreement (the "Sale Agreement") with a Buyer (hereafter, the "Buyer") that provides for the purchase and sale of the Sale Assets. The Sale Agreement will provide for the sale and transfer of the Sale Assets including the Assumed Contracts (as hereafter defined) to Buyer free and clear of all liens, claims and encumbrances pursuant to §363(b) of the Bankruptcy Code. The Debtors shall seek

approval of the Sale Agreement pursuant to a separate sale motion to be filed with the Court (the "Sale Motion"). The Sale Agreement will include a list of executory contracts and unexpired leases that the Debtors will seek authority to assume pursuant to 11 U.S.C. §365 and thereafter assign to Buyer (collectively, the "Assumed Contracts"). The expenses and any cure costs associated with the assumption and assignment of the Assumed Contracts will be borne by the Debtors.

7. The Objection of Winthrop is resolved as set forth in the Debtors' Memorandum in that the Sale Assets will not include any property not owned by the Debtors and, specifically, shall not include any assets subject to leases, including all assets subject to the Lease Agreement dated November 29, 1999 ("Lease Agreement") by and between the Debtors and Winthrop as well as all schedules related to Lease Agreement including Schedule 001X. In addition, the Sale Motion will clearly identify all executory contracts and unexpired leases to be assumed and assigned as a part of the sale and will give all parties to such contracts including but not limited to Winthrop, at least 30 days prior notice of the hearing to approve such assignment.

8. The Court hereby approves the payment of a fee (the "Termination Fee") to Buyer in the amount of \$225,000.00 in the event that the Debtors file a Motion seeking approval of a sale to Buyer utilizing the Sale Agreement and the Sale Assets are sold to another purchaser for an amount in excess of the sale price stated in the Sale Agreement, all as to be more fully described in the Sale Agreement. The Termination Fee is Buyer's exclusive remedy in the event a sale is not consummated with Buyer as contemplated in the Sale Agreement.

9. The sale of the assets pursuant to the Sales Agreement shall be subject to competitive bidding to be conducted by the Debtors as provided herein (the "Auction"). Any initial competing bid must be at least \$275,000.00 more than the purchase price set forth in the

Agreement and subsequent competing bids must be made in increments of not less than \$50,000.00. Any competing bid must be in a form substantially identical to the Sale Agreement (except as to purchase price and necessary conforming changes to reflect a different purchaser) and such bid shall not be subject to any further due diligence review or financing contingencies. All competing bids must be filed with the Court and received by the Debtors on or before 12:00 Noon of the day two (2) business days preceding the Auction. The Auction will be conducted by the Debtors' Counsel at the offices of the Debtors' Counsel two (2) days prior to the Sale Hearing. A court reporter will record all of the proceedings of the Auction. At the Sale Hearing, the highest and best bid received at the Auction will be presented to the Court for approval.

10 The Auction and sale of the Sale Assets shall be governed by the following procedures:

(a) Any entity that desires to submit a competing bid for the Sale Assets after the Debtors execute the Sale Agreement shall be permitted to conduct reasonable due diligence prior to the Sale Hearing (as hereafter defined) of the Debtors' books and records subject to executing an appropriate confidentiality agreement.

(b) Any entity that desires to submit a competing bid for the Sale Assets must file with the Court and serve on counsel to the Debtors, Mark Craige, Esq. of Morrel, West, Saffa, Craige & Hicks, Inc., 5310 East 31<sup>st</sup> Street, Suite 1100, Tulsa, Oklahoma 74135; counsel to F&M, J. Schaad Titus, Esq. of Barkley, Titus, Hillis & Reynolds, 15 East 5<sup>th</sup> Street, Suite 2750, Tulsa, Oklahoma 74103 and Neal Tomlins, Esq. of Tomlins & Goins, 2100 South Utica Avenue, Suite 300, Tulsa, Oklahoma 74114 and counsel for the Buyer, Steven W. Bugg, McAfee & Taft A Professional Corporation, Tenth Floor, Two Leadership Square, 211 North Robinson, Oklahoma City, Oklahoma 73102 and John M.

Ramirez, Venable, Baetjer and Howard, LLP, Two Hopkins Plaza, Suite 1800, Baltimore, Maryland 21201, its written bid on or before 12:00 Noon. C.S.T. of the day two (2) business days preceding the Auction.

(c) Such written bid must contain evidence satisfactory to Debtors of the bidder's ability to consummate the sale transaction by the Closing Date set forth in the Sale Agreement, including evidence of adequate financing. Such written bid shall be accompanied by a cashier's check or bank draft in the amount of \$50,000.00, which sum shall constitute an earnest money deposit for the ultimate purchase price. Such deposit shall be non-refundable in the event that such bidder is the successful bidder at the sale hearing but fails to close its purchase of the Sale Assets, unless such failure is the result of a non-curable material breach by Debtors under an agreement approved by the Court ("Non-Curable Breach"). Except as provided herein, all earnest money deposits (including the earnest money deposit of Buyer under the Sale Agreement) shall be immediately refunded to all unsuccessful bidders.

(d) All competing bids that satisfy these procedures shall be reviewed at the Auction and the highest bid will be presented to the Court at the hearing to consider the Sale Motion (the "Sale Hearing"). No additional bids will be accepted or considered by the Court at the Sale Hearing.

(e) The competing bidder (if any) who first serves notice (as specified in Subparagraph 12(b) above) of its intent to submit a competing bid shall make the initial competing bid at the Auction of not less than \$275,000.00 more than the purchase price set forth in the Agreement. After the initial competing bid has been submitted, all subsequent bids shall be made in cash increments of not less than \$50,000.00.



(f) If the winning bidder fails to consummate the proposed transaction on or before the Closing Date as defined in the Agreement, Debtors shall be authorized to consummate the proposed sale transaction with the next highest bidder willing to consummate the proposed sale transaction without the need for an additional hearing or order of Court.

(g) All bids are submitted on the condition that if the winning bidder fails to close for a reason other than a Non-Curable Breach as defined in the Agreement, the Debtors may accept the next highest offer within a reasonable time after the winning bidder fails to close and the next highest bidder's offer is not deemed revoked or withdrawn by the original acceptance of the winning bidder's offer.

(h) In the event that a bidder other than Buyer is determined to be the winning bidder at the Auction and the winning bid is approved by the Bankruptcy Court and either results in an actual sale of the Sale Assets in favor of such winning bidder then Buyer shall be paid a Termination Fee of \$225,000.00 in cash on the closing date of the sale to the winning bidder.

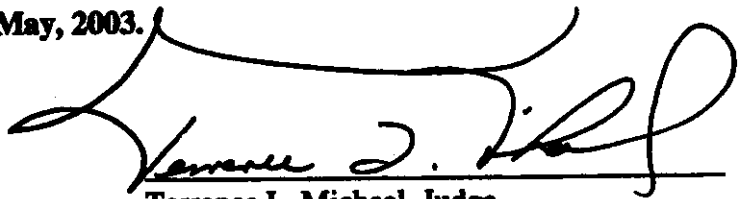
(i) Objections to the Sale Motion must be served on counsel for the Debtors, counsel for F&M, counsel for Buyer and counsel for any Committee on or before eight (8) business days before the Sale Hearing or such objection may not be considered by the Court.

(j) All bids submitted for the Sale Assets must contemplate a cash purchase. In the event that the Buyer has been able to obtain financing from F&M for the purchase of the Sale Assets or F&M has agreed to an assumption of all or a portion of its indebtedness secured by the Sale Assets, no other bidder may rely upon such bidder's

ability to obtain financing from F&M or assume any indebtedness in submitting its bid. F&M's willingness to finance a proposed purchaser or allow assumption of any indebtedness shall be evaluated on a case by case basis and F&M has no obligation to finance any potential purchaser or allow assumption of any of F&M's existing indebtedness. Any requests for financing from F&M must be made directly to F&M.


**IT IS SO ORDERED.**

Dated this 9<sup>th</sup> day of May, 2003.



Terrence L. Michael, Judge  
United States Bankruptcy Court

Submitted by:



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